

MOAHR MTT Guide for Parties for the Conducting of Entire Tribunal Video Conference Hearings

This Guide is designed to provide direction to parties for the conducting of video conference hearings in contested cases pending before the Entire Tribunal of the Michigan Tax Tribunal (MTT).

A video conference hearing is a proper and permitted MTT proceeding conducted through electronic means rather than in a courtroom.¹ The usual rules, procedures, courtesies, and formalities applicable to an MTT courtroom hearing are applicable to an MTT video conference hearing and are expected to be complied with.

The decision as to how a hearing will be conducted (i.e., courtroom or video conferencing) will be decided by the MTT or assigned MTT judge. In making such decisions, the MTT or judge may consider issues such as the parties' willingness to participate in a video conference hearing; the nature of the case; the technological facilities available to the parties; the attorneys, agents, and number of witnesses to be called; the parties' ability to effectively participate in a video conference hearing; and how best to uphold the interests of justice.

In all video conference hearings, it is essential that a reliable and continuous video connection with the judge, attorneys, agents, witnesses, and court reporter be maintained to ensure the integrity of the record. All video conference hearings conducted in the Entire Tribunal shall be transcribed by the court reporter engaged by the parties, as provided in the order scheduling the hearing (i.e., the prehearing conference or scheduling conference summary). Further, any written comments made by an attendee (i.e., participant or observer) during a hearing through the *Teams* "Chat" function will **not** be considered or included as part of the transcribed record.

I. Video Conference Options

The MTT will be conducting video conference hearings through the *Microsoft Teams* platform, which allows invited participants (i.e., attorneys, agents, witnesses, court reporter, etc.) and non-participants (i.e., the viewing public) to join a video conference proceeding using video and audio from a desktop, laptop, tablet, or smartphone.

Video conference proceedings via *Microsoft Teams* are set up using email addresses and parties will be required to provide the email address for each of their participants (i.e., attorneys, agents, witnesses, court reporter, etc.) as provided by the prehearing conference or scheduling conference summary. As for rebuttal witnesses, the parties shall provide the Tribunal with the rebuttal witness or witnesses' email address at least one working day prior to the date of the scheduled hearing. A "**working day**" is defined as a day the MTT is open for business and **not** a Saturday, Sunday, or day the MTT is not open for business (i.e., holiday, furlough day, etc.).

¹ See R 792.10121 and R 792.10201.

Open Meetings Act Compliance

To ensure compliance with the Open Meeting Act, the posted notice for each hearing will include information directing observers (i.e., the viewing public) wishing to attend a hearing to submit their email addresses to the MTT prior to the commencement of the hearing so that an email can be sent inviting them to “join” the hearing as an attendee.²

Note: Observers should mute their microphones to ensure that they do not unintentionally interrupt the conducting of the hearing. If an observer **repeatedly or intentionally** interrupts the conducting of the hearing, the observer may be removed from the hearing **and** prevented from re-joining the hearing.

II. How to Access *Microsoft Teams*

Although it is **not** required, it is **recommended** that participants and observers **download** the free *Microsoft Teams* app for improved quality of participation or observation. If the free *Microsoft Teams* app is **not** downloaded, it is **assumed** that all participants will be able to connect to the hearing with both functional video and audio to fully participate in or observe a hearing that will be conducted using *Microsoft Teams* program software.

The following is being provided to facilitate both the downloading of the Teams app and the use of the Teams app whether downloaded or not downloaded:

Windows based device. The program can be downloaded from the *Microsoft* website for free. Alternatively, the program can be accessed by clicking the link provided by the MTT if the user is operating on *Microsoft Edge* or *Google Chrome* web browsers. However, it is recommended that the program be downloaded, which will auto-launch the hearing when the link is clicked.

Mac/Apple Based Products. The program can be downloaded from the *Microsoft* website for free. Alternatively, the program can be accessed by clicking the link provided by the MTT if the user is operating on *Microsoft Edge* or *Google Chrome* web browsers. The program will **not** work with *Safari* web browser. However, it is recommended that the program be downloaded, which will auto-launch the hearing when the link is clicked.

Android based mobile devices and tablets. It is **strongly** recommended that the *Teams* application be downloaded for free from the *Google Play Store* and installed on your device. Once the link is emailed to you by the MTT, clicking the link will automatically launch the *Teams* program. Alternatively, the program can be used in your mobile web browser.

² See MCL 15.264.

Apple/iOS based mobile devices and tablets. It is **strongly** recommended that the *Teams* application be downloaded for free from the App Store and installed on your device. Once the link is emailed to you by the MTT, clicking the link will automatically launch the *Teams* program. Alternatively, the program can be used in your mobile web browser if you are using *Google Chrome*. This will reportedly **not** work with *Safari*.

Joining a Video Conference Proceeding

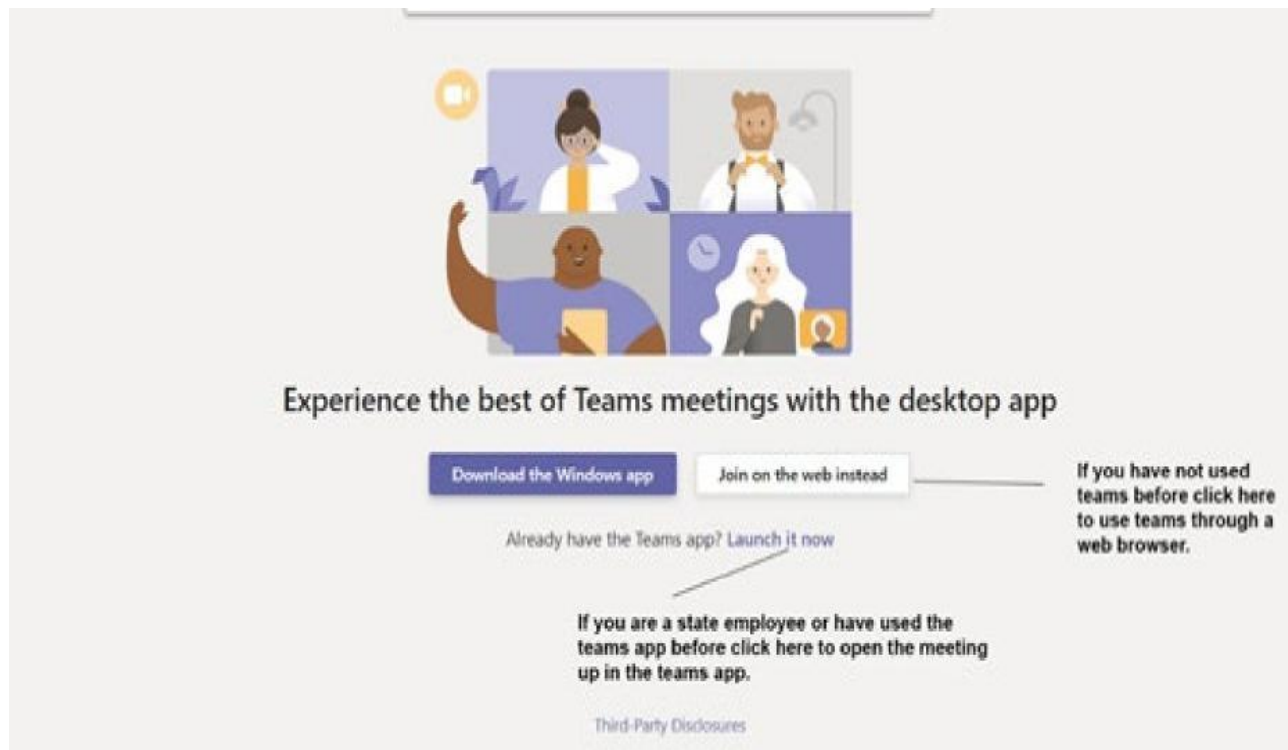
To join a scheduled video conference proceeding, you click the “Join Microsoft Teams Meeting” link on the email “inviting” you to the Teams meeting or hearing. Note: If the link opens in Internet Explorer or Microsoft Edge, it may **not** work. Rather, it is **recommended** that you open the link in Google Chrome.

Mock Trial 2	
Organizer	Kopke, Peter (LARA)
Time	Tuesday, May 19, 2020 8:30 AM-10:00 AM
Location	Microsoft Teams Meeting
Response	✓ Accepted Change Response
<hr/>	
Join Microsoft Teams Meeting	
+1 248-509-0316 United States, Pontiac (Toll)	
Conference ID: 365 970 410#	
Local numbers Reset PIN Learn more about Teams Meeting options	

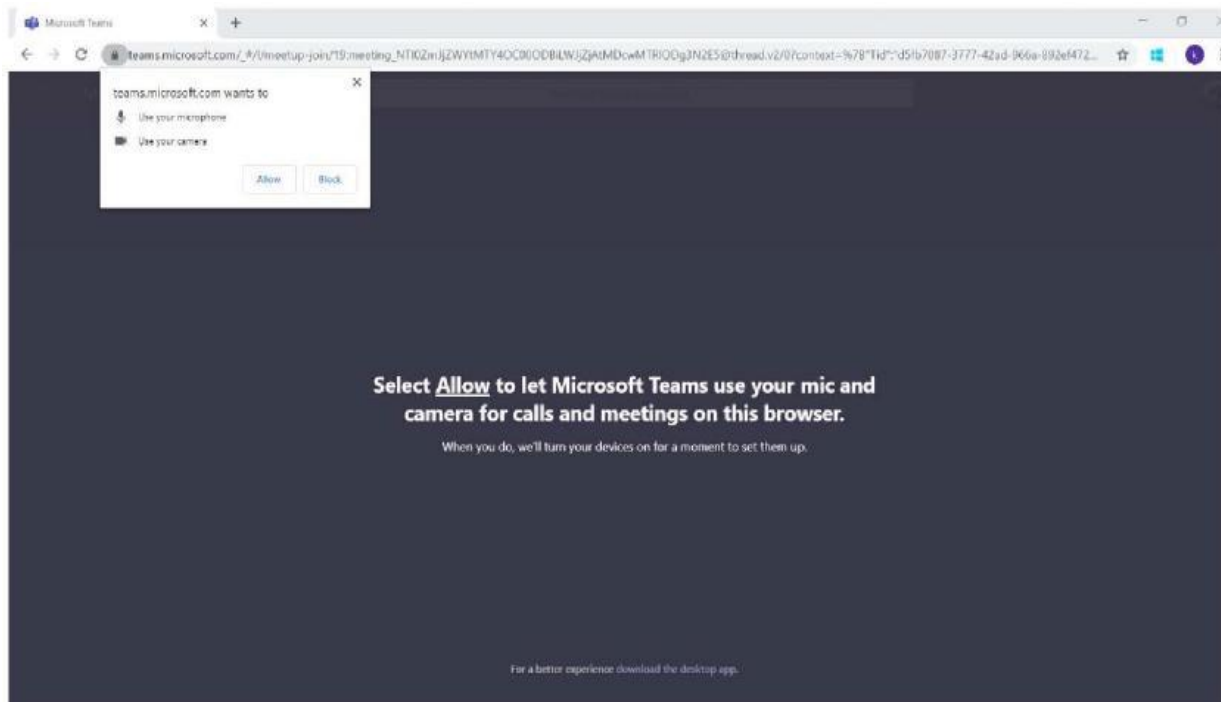
Although observers can call into a hearing to listen to the hearing by utilizing the provided telephone number and Conference ID, participants **must** “join” the hearing for both video and audio.³

After clicking the “Join Microsoft Teams Meeting” link you will be directed to the following page:

³ Microphone quality differs from computer to computer and can also be impacted by connection issues (i.e., feedback, etc.). Two possible solutions to improve poor audio are the use of headsets with microphones or the use of telephones. The use of telephones would be in conjunction with video streaming on the computer. A participant would utilize the provided telephone number and Conference ID to connect for audio purposes. Finally, the *Teams* app allows you to test your microphone prior to joining a *Teams* meeting or, for our purposes, the hearing.



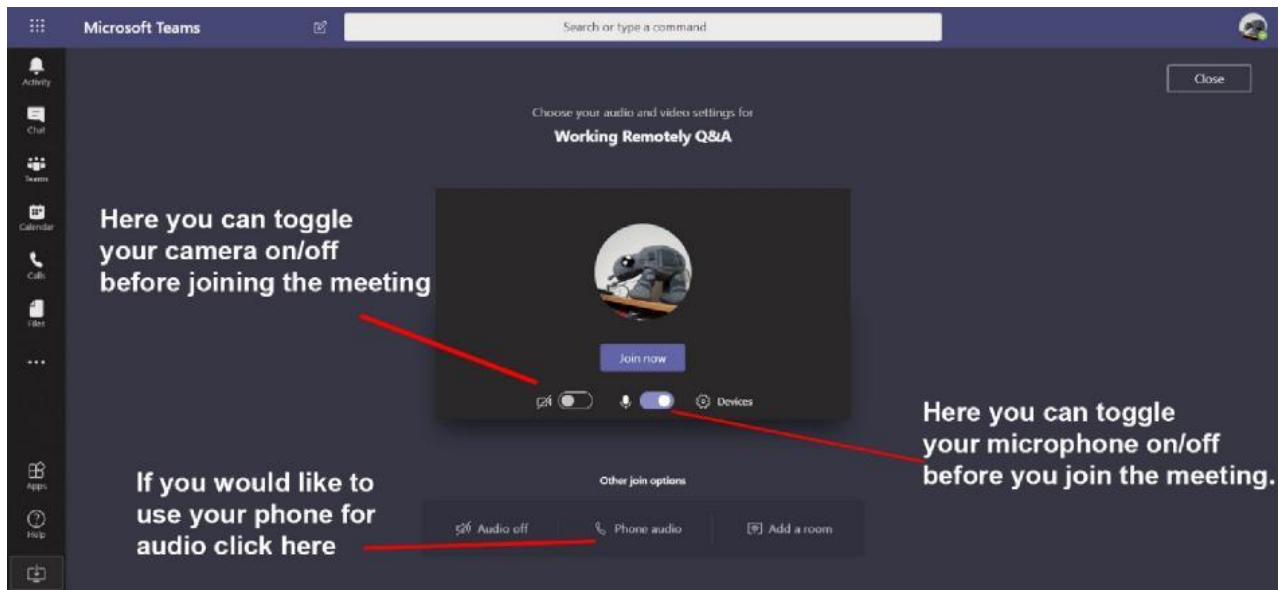
The first time you join a *Teams* meeting it will ask for permission to use your microphone and camera. Clicking “Allow” in the top left of the screen will allow *Teams* to let you talk to people in the hearing and let people see you through your camera if they are both turned on. (Note: Participants **must** turn their camera on.)



Pre-Join Window

After clicking “Allow” you will be taken to a pre-join window (i.e., “virtual lobby”). In this window you can change settings (mute, camera, call in option) before you join the hearing. In the middle of the screen below is the “Join now” button. There are two other buttons below “Join now.” The toggle on the right controls your microphone, and the one on the left your camera. If you see blue, the toggle is on. (In this picture, the microphone is on, but the camera is not.)

Although you need to click on the “Join now” button to join the hearing, you will **not** leave the virtual lobby **until** the MTT allows you into the hearing. The judge will join the hearing at least 20 minutes in advance of the scheduled start time to admit participants and observers. **Note:** State employees within LARA will bypass the virtual lobby and immediately join the hearing when they click on the “Join now” button.

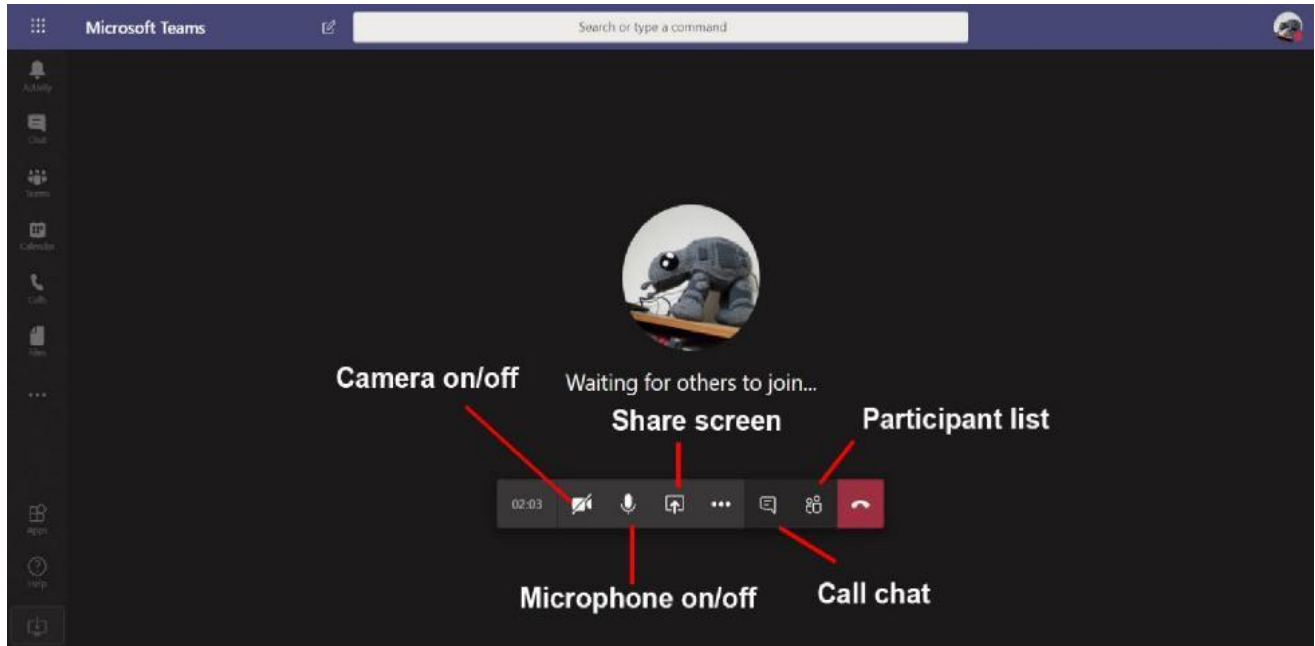


Participating Through Teams

Once in the hearing, you will see the screen below. If others have bypassed the virtual lobby or have already been let into the hearing, you will see other participants and observers, if any, on the screen. The participants and observers you will see will be the last four participants or observers to speak. You have the option of “pinning” participants to your screen so you will see the same person(s) regardless of who is speaking. right click on the person’s video and click “pin.” **Note:** You may pin participants, but you will lose the ability to see anyone else who is speaking.

The judge will be “pinning” the court reporter, the witnesses offered when the witness is testifying, and the lead attorney or agent for each party.

The control bar at the bottom appears if you move your mouse around in *Teams* (it may disappear after time with no activity). In the *Teams* control bar, from left to right, are the following options: camera on/off, microphone on/off, share screen, three dots (more options), call chat, and participant list.



The camera for the lead attorneys or agents, the witness currently testifying, and the court reporter must always be turned on during the hearing unless otherwise directed by the judge.

III. Prior to the Start of a Video Conference Proceeding

A. Entire Tribunal Hearing

1. Parties shall submit their exhibit lists and exhibits, with the exception of rebuttal exhibits, to the MTT by **e-filing or email** and the opposing party or parties by **email on or before** the date specified for the filing and exchange of exhibits lists and exhibit in the order scheduling the hearing (i.e., prehearing conference or the scheduling summary). The exhibits shall be separately marked (i.e., P-1, P-2, R-1, R-2, etc.) and **properly** paginated to facilitate their review during the hearing.⁴ Each exhibit shall be separately e-filed or attached to the emails as a separate attachment to further facilitate their review during the hearing. **If the exhibit list**

⁴ Parties have in the past either **not paginated** their valuation disclosures **or re-paginated** their valuation disclosures when they are submitted as exhibits. Both the failure to paginate and the re-pagination of valuation disclosures causes issues with respect to the review of those exhibits during the hearing. As a result, parties are **required to paginate** their valuation disclosures prior to their initial filing and exchange **and precluded from re-paginating** those exhibits when they are **e-filed or emailed** to facilitate their review during the hearing.

and exhibits are emailed, the parties shall utilize the following email address for the MTT: taxtrib@michigan.gov. As for the parties, each party shall provide to the opposing party or parties an email address or addresses to be utilized for the emailing of exhibit lists and exhibits. The email address or addresses shall be provided **in advance of** the date specified for the filing of exhibit lists and exhibits in the order scheduling the hearing (i.e., prehearing conference or scheduling conference summary).

The docket number of the case (i.e. MOAHR Docket No. 19-001234, etc.) **shall be included in the subject line of the emails with a reference to the filing of exhibit lists and exhibits.**

2. Parties are **encouraged** to stipulate to facts and the admissibility of exhibits and expert witnesses and submit those stipulations to the MTT by email utilizing the above-noted email address **at least one working day in advance of the scheduled hearing date.**

To the extent that the parties are unable to stipulate to the admission of an exhibit or expert witness, the party objecting to the admission **shall** submit a written explanation of the objection for each exhibit or expert witness to the MTT and the opposing party or parties by email **at least one working day in advance of the scheduled hearing date** utilizing the above-noted email addresses for the MTT and the opposing party or parties.

The docket number of the case (i.e. MOAHR Docket No. 19-001234, etc.) **shall be included in the subject line of the emails with a reference to what type of document is being filed (i.e., stipulations or objections), as appropriate.**

3. With respect to rebuttal exhibits, the rebuttal exhibit or exhibits, if any, shall be marked (i.e., P-1, P-2, R-1, R-2, etc.), properly paginated, and separately uploaded through the *Teams* "Chat" function prior to the introduction of any rebuttal exhibit. Although it is **incumbent** on the attorneys or agents to understand how to properly upload an exhibit through the *Teams* "Chat" function, a video addressing that process has been provided for your convenience. To access the video, click on the following link:



Quick Look at
Teams.mp4

4. Parties shall, **in advance of the hearing**, provide their witnesses with copies of all exhibits that each witness would need for his or her direct testimony.
5. Parties shall prepare written opening remarks and email those opening remarks to the MTT and the opposing party or parties utilizing the email address noted

above **at least one working day in advance of the scheduled hearing**. Copies of the parties' opening remarks **shall also** be emailed to the court reporter at least one working day in advance of the scheduled hearing utilizing the email address provided to the parties by the court reporter.

The docket number of the case (i.e. MOAHR Docket No. 19-001234, etc.) **shall be included in the subject line of the emails with a reference to the filing of opening remarks.**

IV. Conducting a Video Conference Proceeding

Entire Tribunal Hearing

It is the MTT's intent that such hearings will be conducted like all other hearings previously conducted by the MTT with some slight modifications to facilitate both the conducting and transcribing of the hearings. It is, however, also expected that parties will have engaged in serious negotiations prior to the commencement of a scheduled video conference hearing to resolve the case or limit the issues to be resolved.

1. Depending on the case, the MTT or judge may, **upon the request of a party or upon its own initiative**, schedule a test hearing prior to the date of the scheduled hearing to reduce the need for adjournment or any delay on the day of the scheduled hearing. Such tests are intended to benefit the parties and the MTT and the MTT expects the parties and/or their attorneys or agents will make themselves available to participate in any ordered test.
2. The participants (i.e., attorneys, agents, witnesses, the court reporter, etc.) must "join" the hearing at least 15 minutes before scheduled start of the hearing so that:⁵
 - a. The parties' attorneys or agents can identify themselves for the court reporter and provide the court reporter with the names of any witnesses to be offered for testimony, the order in which those witnesses will be called, and whether any witness should be removed from the hearing after the judge's opening remarks subject to recall prior to that witness being offered for testimony.
 - b. The attorneys, agents, and identified witnesses shall also inform the court reporter as to whether they are in secure rooms with closed doors so to avoid any unnecessary interruptions and whether the identified witnesses are alone in those rooms and, if not, the identity of the person or persons in the same room with that witness.

⁵ The MTT will admit participants into the hearing through the "virtual lobby" no later than 15 minutes before the scheduled hearing time and admit non-participants when the hearing is commenced.

3. The hearing shall be called to order by the judge, who shall make opening remarks including directions necessary for the commencement and conducting of the hearing. Necessary directions would include, but are not limited to:
 - a. Directing participants to:
 - (i) Have their cell phone ringers on silent.
 - (ii) Use their cell phones during the hearing only for purposes of participating in the hearing or communicating with co-counsel or other identified participants excluding witnesses when that witness is testifying.
 - (iii) Mute their microphones when cell phones are being used for purposes of communicating so as to avoid any interruptions with the conducting of the hearing.
 - b. Directing witnesses to refrain from reading from exhibits or other writings (i.e., statements, texts, etc.) unless specifically directed to do so.
 - c. Indicating that participants, including the judge, may be required to repeat statements, questions, and testimony if a statement, question, or testimony is, **as indicated by the court reporter**, unclear because parties were speaking over each other or for technical reasons (i.e., freezing, unclear audio, etc.). To avoid or, at least, reduce the need for repeated statements, questions, or testimony, directing:
 - (i) Attorneys, agents, and witnesses to stop speaking when the judge speaks.
 - (ii) Attorneys or agents to note their objections by waving their hand and stating, "Your Honor." The attorneys or agents should then wait for the judge to recognize them before making their objection.
 - (iii) Witnesses to stop testifying when they see an attorney or agent waving their hand or hear an attorney or agent state "Your Honor" for purposes of making an objection.
 - (iv) Opposing attorneys or agents to wait until they are recognized by the judge for purposes of making a response to the objection.
 - (v) Witnesses to only begin testifying when the attorney or agent asks a question of the witness or the witness is recognized by the judge after an objection for purposes of responding to a question.
 - (vi) Attorneys and agents to refrain from interrupting their witness' testimony. Rather, the attorney or agent should, if practicable, wait until the witness is finished speaking before asking another question.

Upon completion of any necessary comments, the judge will commence the hearing by resolving any issues relating to the removal of a witness from the hearing subject to recall prior to that witness being offered for testimony and,

once resolve, asking Petitioner's lead attorney or agent to present their first witness.

4. With respect to the offering of witnesses, the judge will ask the offered witnesses to identify themselves and swear them in before questioning begins.
5. Upon the conclusion of all testimony, the judge will provide for the filing of written, limited closing remarks (i.e., arguments versus findings of fact or conclusions of law). The judge will also, at his or her own discretion, provide limits on the length of the closing remarks.